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June 20, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Wireless Internet Service Providers Association**
WC Docket Nos. 10-90, 14-58 and 14-259
Written Ex Parte Presentation

Dear Ms. Dortch:

The Wireless Internet Service Providers Association (“WISPA”) hereby responds to recent filings submitted by the Pennsylvania Public Utility Commission (“PA PUC”) concerning PA PUC’s vaguely articulated proposal intended to steer more federal broadband support dollars exclusively to providers in Pennsylvania.¹

At the outset, WISPA reiterates its support for state efforts to encourage fixed broadband deployment to unserved areas, both where price cap carriers declined the statewide commitment and other areas where 10/1 Mbps service is not available. WISPA disagrees, however, with the means by which Pennsylvania seeks to accomplish this objective. Further, despite numerous opportunities to provide certainty and details to its proposal, PA PUC has not done so.

¹ See Pennsylvania Reply to the Wireless Internet Service Providers Association Opposition to Pennsylvania’s Petition for Reconsideration, Modification, or Waiver, WC Docket Nos. 10-90 and 14-58 (filed May 30, 2017) (“PA Reply”); Letter from Regina L. Matz, Legal Counsel to Pennsylvania Public Utility Commissioner David W. Sweet, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, 14-58 and 14-259 (filed June 1, 2017) (summarizing ex parte presentation to FCC Chairman Ajit Pai and his Legal Advisor, Dr. Jay Schwarz) (“PA PUC June 1 Letter”); See Letter from Regina L. Matz, Legal Counsel to Pennsylvania Public Utility Commissioner David W. Sweet, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, 14-58 and 14-259 (filed June 8, 2017) (summarizing ex parte presentation to Claude Aiken, Legal Advisor to Commissioner Mignon L. Clyburn) (“PA PUC June 8 Letter”).



In sum, PA PUC proposes to apply a “negative weight” for bids in the Connect America Fund (“CAF”) Phase II reverse auction that would benefit bidders for census blocks in Pennsylvania where Verizon declined the offer of statewide support. The bidding benefit would apply “*if* Pennsylvania brings additional financial resources to the auction.”² PA PUC concedes that its state legislature has not allocated funds for broadband deployment support and that its “budget deliberations are often slow and deliberate and remain ongoing.”³ In PA PUC’s view, grant of its petition would incentivize its efforts to identify budgetary resources.⁴ PA PUC submits that “a single state factor as presented in our proposed modification would not complicate the FCC’s formula” for evaluating bids.⁵

WISPA takes issue with the incentive arrangement PA PUC envisions. Federal support for broadband should not be used to create budget incentives for individual states. Rather, states should have the incentive to fund broadband *independent* of any federal funding program, and not merely as a lever by which states with substantial financial resources can effectively redirect federal funding to service providers within their own borders. That is a key distinction between the state funding program in New York, which was established and funded *before* that state sought its waiver of the CAF rules. Taken to its logical extreme, any state could now do as Pennsylvania is attempting to do and create a nationwide preference for CAF support for census blocks within states where the price cap carriers declined the offer of support. With finite CAF support set at roughly 20 percent of the reserve price,⁶ the “negative weight” state preference could create the precise situation the Commission affirmatively declined to adopt when it decided to conduct a nationwide auction and to not give preferences to states where the price cap carrier declined the offer of support.

If the Commission is seriously considering PA PUC’s request, it must take note of the lack of certainty and details in the proposal, to-wit:

- *Speculative state funding.* As noted above, PA PUC has not identified or allocated funds for broadband deployment support. Nor has any amount of funds been allocated so that the impact of PA PUC’s proposal can be assessed. Unless or until a definitive amount of funds are appropriated, PA PUC’s request is highly speculative.

² PA Reply at 4 (emphasis added).

³ PA PUC June 8 Letter at 1.

⁴ See PA Reply at 5.

⁵ *Id.*

⁶ The annual CAF budget is \$198 million. The current reserve price is approximately \$956,650,000 for 1,415,484 unserved locations. In order for every census block to be funded, the reserve price would need to be bid down to approximately 20 percent of the reserve price.

- *Unknown funding requirements and restrictions.* Even if state funding ultimately is approved, there is no – and can be no – current understanding of what will be the requirements and restrictions on obtaining funding. For instance:
 - Will support be available only to incumbent local exchange carriers (“ILECs”), as has been the case in prior state support programs? It appears that there is some belief that granting the petition “would allow other *carriers operating in the state* access to these funds”⁷ – a double set of restrictions that would be diametrically opposed to the Commission’s technology neutral, performance-based approach that does not limit eligibility to “carriers” that already “operate in the state.”
 - Will the state adopt service requirements, financial requirements or reporting requirements that would have the effect of disadvantaging or precluding smaller providers?
 - Although PA PUC asserts that its “proposal is a simple, objective, technologically-neutral vehicle available to all potential bidders,”⁸ this statement cannot bind a state legislature that has not adopted any relevant law and is free to make different policy choices. At best, PA PUC’s proposal is premature and necessarily lacks the certainty the Commission should require before approving the requested relief. While it may be true that “WISPA *will likely find* that submitting a bid to serve Pennsylvania’s underserved areas where Verizon declined support *may* be more economically feasible with Pennsylvania’s funding than without,”⁹ the absence of a state law renders this statement highly speculative, a fact that PA PUC’s own carefully qualified language makes plain.
 - When would state support need to be approved and allocated in order for the “negative weight” to apply? Who would bear the consequences if state appropriations are subsequently reduced or withdrawn entirely?
- *Impact on other states.* PA PUC fails to provide any assessment of the impact of its proposal on other states, especially those that were not subject to the statewide offer but are included in the CAF Phase II auction.

⁷ Letter from Douglas E. Hill, Executive Director, County Commissioners Association of Pennsylvania, WC Docket Nos. 10-90 and 14-58 (filed May 15, 2017) (emphasis added).

⁸ PA Reply at 4. PA PUC’s statement that it has “long supported technological neutrality” misses the point. *Id.* at 6. WISPA’s opposition to the Pennsylvania petition is premised in part on the state’s history of supporting ILECs operating in the state, a particular class of broadband provider, and not adopting a policy that would support any provider willing to meet performance criteria, irrespective of the technology they choose to use in a particular case.

⁹ *Id.* (emphases added).

- Given PA PUC's recognition that other states could seek "similar relief in other declined states,"¹⁰ could states where no Phase II support was offered (and therefore not declined) also seek the "negative weight" bidding preference? Could census blocks within declined states but outside of price cap areas also be entitled to the preference?

Based on the unfairness to other states, the unavailability of state funding and the unanswered questions in the PA PUC proposal, the Commission should reject PA PUC's request. Incentivizing states with sufficient monetary resources to allocate more funding to broadband deployment for the specific purpose of redirecting additional federal funding to service providers in their states would materially disadvantage customers in less prosperous states that are unable to match this calculated funding approach. This result would be contrary to the CAF Phase II goals of providing support for services to consumers in rural and high-cost areas throughout the country.

Instead, the Commission should retain its current model – with the changes in bidding weights that WISPA has proposed¹¹ – without compromising Pennsylvania's ability to provide complementary (but unweighted) funding if and when state funds are appropriated to support broadband deployment. If state support is approved before the CAF auction, Pennsylvania could devise a state broadband deployment program that would incentivize bidders to bid for census blocks in Pennsylvania, or a program that would support areas where no winning bidder emerged. If state support is approved after the CAF auction, Pennsylvania would benefit from knowing the areas in the state where CAF Phase II support is allocated, and thus make the policy choice to support federally funded areas or non-federally funded areas, or both in some combination. To disrupt an auction system based on speculation – an outcome that would open the door for any state to do the same thing – would contravene established policy and, in any event, be entirely premature.

¹⁰ See PA PUC June 8 Letter at 1.

¹¹ See WISPA Opposition to and Comments on Petitions for Reconsideration, WC Docket Nos. 10-90 and 14-58 (filed May 18, 2017) (supporting a narrower gap in the bidding weight tiers).

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceedings.

Respectfully submitted,

/s/ Stephen E. Coran
Stephen E. Coran

cc: Dr. Jay Schwarz
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